

provider is doing something—but where that something is of no real value to the borrower.

Finally, I would note that the October HUD Policy Statement also asserts that Section 8 applies to unearned fees where “the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed.” A concern has been raised that such an open-ended application could potentially subject every settlement charge for every loan to a subjective determination of whether such a charge is excessive. The RESPA statute is not intended to be applied so broadly. Similarly, it is not the intent of Section 4 of my bill to subject charges where substantive services are provided by a single service provider to a test of merely whether they are excessive (provided there is no violation of 8(a) kickback or referral fee prohibitions).

Similarly, it is not the intent of Section 4 of my bill to apply the “no, nominal, or duplicative” test to commissions or fees charged by real estate brokers for services related to real estate sales, providing they are negotiated up-front in writing between a broker and the seller (or buyer), and provided that there is no violation of 8(a) kickback or referral fee prohibitions. The purpose of Section 4 of my bill with regard to charges by a single settlement provider is intended to address fees that are part of the mortgage loan process; thus, real estate fees agreed to voluntarily and explicitly by a seller months prior to a mortgage loan being made should not be subject to Section 8 RESPA scrutiny, providing there is no kickback or referral, and the fee is not increased above the agreed-upon amount.

Third, my bill strengthens consumer protections with respect to the administration of escrow accounts, which are commonly required by lenders for the payment of taxes and insurance. Section 6 makes loan servicers liable for fees and penalties arising from their failure to make timely payment of taxes, insurance premiums, and other charges. It also prohibits a servicer from profiting from the failure to make timely payment of insurance charges, by prohibiting such servicer from collecting any fees associated with force-placed hazard insurance.

And, Section 6 deals with the timely return of escrow funds upon loan repayment. As the HUD-Fed report noted, current law does not require return of such funds; it merely requires a final statement be sent out within 60 days of

loan payoff. This can be a particular hardship for certain borrowers, especially those who are refinancing or buying a different home.

When a loan is prepaid in full, the borrower pays the lender all outstanding principal and interest. Accordingly, it is not unreasonable to ask the lender to return all escrow funds at the same time, e.g., as an offset. Therefore, Section 8 of my bill requires the lender to return all escrow funds at time of loan repayment, provided the borrower gives 7 calendar days notice of such intent to prepay. If notice is not given, the servicer must return escrow funds within 21 days. Monetary damages are provided for failure to comply with this requirement.

Fourth, the bill beefs up enforcement provisions. The HUD-Fed report noted that requirements relating to the Good Faith Estimate and the HUD-1 Settlement Statement are “not supported by any enforcement authority under RESPA.” Thus, while the details and scope of what enforcement provisions should be established is a matter for honest debate, it seems clear that the current lack of any enforcement mechanism is unacceptable.

Therefore, Section 7 provides for a uniform enforcement provision that would apply to violations of Section 4 (HUD-1 Settlement Statement), Section 5 (Good Faith Estimate), Section 6 (loan servicing disclosure requirements), and Section 10 (Escrow Account Statements). Settlement service providers that violate these sections would be liable for actual damages, plus additional damages as the court may award, up to \$2,000 per loan, plus court costs in the case of successful legal action. In addition, this section provides for a uniform statute of limitations of three years for all enforcement actions.

Finally, Section 5 of the bill directs HUD to expand the Special Information Booklet required to be given to borrowers at the same time the Good Faith Estimate is provided, to include assistance in two common situations faced by borrowers. First, HUD is required to include an explanation of the issues involved in refinancing a mortgage loan, including the tradeoffs of lower interest rates and closing costs. Secondly, HUD is required to include an explanation that some lenders may offer the option that some loan fees may be paid up front, or in the form of a higher mortgage rate, including assistance in evaluating this type of option.

The “Mortgage Loan Consumer Protection Act” represents a balanced, common-sense approach to beef up consumer protections in our mortgage disclosure laws. I urge its consideration and adoption.

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RECOGNIZING JESSE J. WUKIE ON  
HIS APPOINTMENT TO THE U.S.  
AIR FORCE ACADEMY

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HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 22, 2002*

Mr. GILLMOR. Mr. Speaker, it is with great pride that I rise today to recognize my constituent, Jesse J. Wukie of Fremont, Ohio, who recently accepted his appointment to the U.S. Air Force Academy.

Jesse will soon graduate from Fremont Ross High School. During his high school career, he has maintained a high grade point average and was named to the honor roll. He is an accomplished athlete, earning varsity letters in wrestling. And, he has clearly demonstrated his leadership ability, serving as captain of the wrestling team, and as Vice President of his 4-H Horse Club.

Jesse Wukie can be very proud of his many accomplishments. He is a credit to his family, his school, and his community. By accepting his appointment, Jesse is accepting a unique challenge.

The Academy is the pinnacle of leadership development for the United States Air Force. As a member of the Cadet Air Wing, he will face a most demanding academic curriculum and physical regimen. He will live, study and prepare in an environment where strong leadership thrives, individual achievement is expected, and personal integrity is demanded.

Mr. Speaker, General John W. Vessey, Jr. once wrote, “The Nation’s ability to remain free and at peace depends in no small measure on whether we will continue to inspire our youth to serve.”

I am confident that Jesse Wukie has the character and ability to excel at the U.S. Air Force Academy. I ask my colleagues to join me in wishing him well as he begins his very important service to our Nation.